Supreme Court, U.S.
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DOCKET No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

PILOT AIR FREIGHT CORP., McDONOUGH AIR CARGO, INC. d/b/a PILOT AIR FREIGHT CORP. — Petitioners

NANCY R. JELLICO, d/b/a JELLICO STUDIO OF WESTERN ART, — Respondent

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

PETITION FOR WRIT OF CERTIORARI

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54 pp

QUESTION PRESENTED FOR REVIEW

When goods are received by a common carrier for interstate transportation and a bill of lading is duly issued pursuant to the *Pomerene Bills of Lading Act*, 49 USC Appx § 81[1], is the bill of lading nevertheless effective — even if the transportation is interrupted before delivery and the goods are lost during the interruption. Specifically, in those circumstances, will the carrier be permitted to limit liability pursuant to federal common law, as developed by the application of the *Carmack Amendment*, 49 USC § 11707(a)(1) and the *Carmack Limitation Provision*, 49 USC §10730 prior to the deregulation of interstate commerce.

The Colorado courts have decided this issue in a way that conflicts with previous decisions of this Court.

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[1] The Pomerene Act was replaced in 1994 by 49 USC § 80101, *et seq.*, but the case at bar arises out of an incident in 1992.

LIST OF PARTIES TO THE PROCEEDING

Petitioners:

PILOT AIR FREIGHT CORP.
Parent corporations: None
Subsidiary corporations: None

and McDONOUGH AIR CARGO, INC.
d/b/a PILOT AIR FREIGHT CORP.
Parent corporations: None
Subsidiary corporations: None

Respondent:

NANCY R. JELLICO, an individual
d/b/a JELLICO STUDIO OF WESTERN ART.

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CITATIONS OF REPORTS OF COLORADO COURTS

The Colorado Supreme Court in Case No. 95SC506 denied a Writ of Certiorari to the District Court of the City and County of Denver, Colorado. The District Court opinion and Order bears Case No. 94CV3728. This matter was on appeal from the County Court, City and County of Denver, Colorado, bearing Case No. R93005.

STATEMENT OF JURISDICTION

The Colorado Supreme Court Order was issued on 7 May 1996. Pursuant to Colorado Appellate Rule 52(a), no motion for rehearing is required. This matter involves a question of interstate commerce and arises under the *Pomerene Bills of Lading Act*, 49 USC Appx § 81, *et. seq.* and federal common law, as

developed by the application of the *Carmack Amendment*, 49 USC § 11707(a)(1) and the *Carmack Limitation Provision*, 49 USC §10730 prior to the deregulation of interstate commerce.

STATUTES INVOLVED IN THE CASE

Carmack Amendment, 49 USC § 11707

Carmack Limitation Provision, 49 USC §10730

Interstate Commerce Act (Definitions),

49 USC §10102 (28)

Pomerene Bills of Lading Act,

49 USC Appx § 81, *et. seq.*

49 USC § 80101, *et seq.*

(Replaced *Pomerene Act* in 1994).

STATEMENT OF THE CASE

Respondent is an artist and the owner of a certain sculpture and painting. In October 1992, Nadine Marshal (not a party to this matter) delivered the painting and sculpture to Petitioners in California for transportation to another state, and she filled out a bill of lading, putting down no declared value; Ms Marshal was the consignor. For an unknown reason, the consignee on the bill of lading prepared by Ms Marshal was an artist in Arizona, rather than Respondent in Colorado. When delivery was attempted in Arizona, the consignee refused delivery; Petitioners returned the goods to a facility in California, awaiting discovery of the "correct" consignee. Respondent tracked down the goods in Petitioners' facility in San Francisco and instructed Petitioners to ship the goods to Oregon. After

Petitioners received the new delivery instructions, the goods were discovered to be missing or stolen.

The federal question as to the applicability of the limitation of liability was raised in every court below, as the only issue in the case.

The county court judge found that:

> [Petitioners] claim [Respondent's] claims are limited by the Carmack Amendment to the Interstate Commerce Act, 49 USC 11707. . . . the consignee . . . refused the shipment. . . . At this point, the entire cycle concerning the "lost" shipment from California to Arizona was completed. . . . Since there was no bill of lading for the shipment of the artwork from San Francisco to Oregon in November 1992, the carrier cannot limit its liability to plaintiff in this instance. *County Court Findings* ¶7, 9.

On appeal to the district court, the judge held that:

> [Petitioner] argues that the county court erred in its conclusion because the Interstate Commerce Act defines

> "transportation" to include "a . . . warehouse, . . . facility, . . . related to the movement of . . . property and services related to that movement, including . . . storage." *Interstate Commerce Act*, Definitions, 49 USC sec. 10102(23). . . . The shipment had been delivered to the consignee who refused shipment. . . . By the terms of its own tariff, the shipment had been completed when refused by the Arizona artist. *District Court Order* p.2, 1st par.[2]

In both decisions, it was determined that the bill of lading originally issued had ceased to be effective, resulting in Petitioner having the unlimited liability of a warehouseman under the state statute. Under the bill of lading, the goods had a "released value" of $50. Judgement was entered for the plaintiff in the amount of $10,000. The Colorado Supreme Court denied a writ of certiorari.

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[2] The current citation to the Interstate Commerce Act definition is to 49 USC 10102 (28).

The holding that the bill of lading had ceased to be effective is in conflict with previous decisions of this Court.

ARGUMENT

1. **Federal Supremacy.** This Court has long established the supremacy of the federal statutes and federal courts' interpretation thereof as they pertain to interstate commerce. *Pomerene Bills of Lading Act*, 49 USC Appx § 81. *Carmack Amendment*, 49 USC § 11707(a)(1). *Southern Railway Company v. Prescott*, 240 US 632, 36 SCt 469, 471, (1916). *Cleveland, Cincinnati, Chicago, & St. Louis Railway Company v. Dettlebach*, 239 US 588, 36 SCt 177, 179 (1916). *North American Phillips Corporation v. Emery Air Freight Corporation*, 579 F2d 229, 232 (CA2 - 1978).

First Pennsylvania Bank NA v. Eastern Airlines, Incorporated, 731 F2d 1113, 1115 (CA3 - 1984).

2. The Colorado Decisions Contravene Applicable Decisions of the Federal Courts.

2.1. Limitation of Liability - Before Deregulation. The principal aspect of federal law applicable herein has to do with the limitation of liability available to the carrier in an interstate shipment. Federal statutes specifically allow carriers to limit their liability to a stated value. *Carmack Amendment*, 49 USC § 11707(c)(4); *Carmack Limitation Provision*, 49 USC §10730. As was stated by the Second Circuit, "Regardless of the rationale, it is clear that a carrier's valid federal tariffs which are applicable to the shipment at issue govern . . . the nature and extent of the shipper's right of recovery." *North American Phillips*

Corporation v. Emory Air Freight Corporation, 579 F2d at 233.

2.2. Limitation of Liability - After Deregulation. Prior to deregulation of the airline industry in 1978, the provision for a limitation of liability had to be proved to exist in a tariff filed with the federal authorities. Following deregulation, the federal common law on the interstate carriage of goods has prevailed. *Deiro v. American Airlines, Inc.*, 816 F2d 1360, 1365 (CA9 - 1987). *First Pennsylvania Bank NA v. Eastern Airlines, Incorporated*, 731 F2d at 1115. *U.S. Gold Corporation v. Federal Express Corporation*, 719 FSupp. 1217, 1223 (USDC - SDNY 1989). "After deregulation, the validity of the agreed value provision in Eastern's voluntarily published tariff . . . became a purely judicial question for determination by application of the federal common law patterned

upon the policy of the Carmack amendment. [49 USC § 11707(c)(4)]." *First Pennsylvania Bank NA v. Eastern Airlines, Incorporated*, 731 F2d at 1122. As pointed out by the Third Circuit, "[I]f anything, a liberalization of the right to contract should enhance the ability of shippers and carriers to agree on released value clauses." *American Cyanamid Company v. New Penn Motor Express, Inc.*, 979 F2d at 316.

Cases both before and after deregulation have shown that public policy favors the applicability of the limitation. The Eighth Circuit dealt with a deliberate violation of a specific covenant in the bill of lading, and still held that the limitation of liability applied. *Rocky Ford Moving Vans, Inc. v. USA*, 501 F2d 1369, 1372 (CA8 - 1974). In other cases, the courts have held that "nothing short of intentional destruction or conduct in the nature of theft of the property will permit a shipper

to circumvent the liability provisions in a released value provision." *American Cyanamid Company v. New Penn Motor Express, Inc.*, 979 F2d 310, 315-316 (CA3 - 1992), citing *Rocky Ford Moving Vans, Inc. v. USA*, 501 F2d at 1372-1373 and *Deiro v. American Airlines, Inc.*, 816 F2d 1360, 1366 (CA9 - 1987). In understanding the rational behind the limitation, it is important to note that:

> the limitation of the carrier's liability [has been] viewed as a consequence of the transportation charge based upon the agreed value rather than as an exculpation from negligence. . . . The agreed upon value merely constitutes an estoppel against the unfairness of asserting a larger amount as the 'true' value, when a smaller value had been used to calculate the rate. The legal validity of an agreed value contract enabled the carrier's rate to be reasonably proportioned to the risk to which it was exposed. *U.S. Gold Corporation v. Federal Express Corporation*, 719 FSupp. 1217, 1224 (USDC - SDNY 1989).

As was so clearly stated by the Ninth Circuit, "Under the federal common law, only an appropriation of property by the carrier for its own use will vitiate limits on liability." *Deiro v. American Airlines*, 816 F2d at 1366.

2.3. Continuing Efficacy Until Delivery. The Colorado courts' decisions in the case at bar assume that, because the original consignee had refused delivery, the carriage had ceased and could not start again in the absence of a new bill of lading. The Colorado courts miss the point, however, in that the crucial time beyond which the bill of lading ceases to operate is actual delivery. This Court has held that even a written discharge by the consignee does not cancel the efficacy of the bill of lading prior to actual delivery. *Southern Railway Company v. Prescott*, 36 SCt at 470, 471, 472. It that case, this Court held that the bill of lading's

limitation continued in force notwithstanding the completion of the carriage, the execution of the receipt, and the conversion of the carrier into a warehouseman under the terms of the tariff. In another case, this Court framed the issue as follows:

> It is no longer open to question that if the loss had occurred in the course of transportation upon defendant's [railroad] line, the limitation of liability agreed upon with the initial carrier, as this was, for the purpose of securing the lower of two rates of freight, would have been binding upon plaintiff. . . . The question is whether the limitation of liability may be deemed to have spent its force upon the completion of the carrier's service as such, or must be held to control, also, during the ensuing relation of warehouseman. *Cleveland, Cincinnati, Chicago, & St. Louis Railway Company v. Dettlebach*, 36 SCt at 179.

It is notable in the above case that the carrier's own tariff provided that the carrier had become a warehouseman (and allowing additional charges as such) and the parties had a signed document making the conversion from a

carrier to a warehouseman, yet this Court held that the limitations of the bill of lading still governed. This Court found the tariff governing, specifically the provision in the tariff "to the effect that 'every service to be performed thereunder' is subject to the conditions contained in it" *Cleveland, Cincinnati, Chicago, & St. Louis Railway Company v. Dettlebach*, 36 SCt at 179. The Colorado courts in the case at bar have ignored the similar provisions in Petitioner's tariff that provides "The Airbill, and the tariffs applicable to the shipment, shall apply at all times when the shipment is being handled by Petitioner." DEFENDANT'S EXHIBIT 3, p. 6, Rule 30 (emphasis added).

2.4. Warehousing Does Not Add Liability.

As to storage during the course of a shipment, the Eighth Circuit dealt with that issue in a case where the bill of lading prohibited the storage of the goods in an

unapproved warehouse; the carrier nevertheless stored the goods in an unapproved warehouse, where they were destroyed by fire. The District Court had upheld the limitation of liability, and the shipper appealed. The Court of Appeals pointed out that:

> The United States Supreme Court has described the words of the Carmack Amendment as 'comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination.' *Rocky Ford Moving Vans, Inc. v. USA*, 501 F2d at 1372.

The Court of Appeals upheld the District Court, allowing the carrier the benefit of the limitation of liability clause. *Rocky Ford Moving Vans, Inc. v. USA*, 501 F2d at 1372. Dealing with storage before shipment, a federal district court has held that the carrier "should not be treated as a warehouseman [governed by state law liability without limitation] simply because it stores

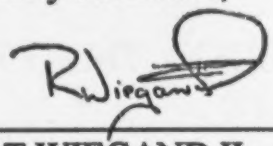
goods temporarily in a warehouse facility prior to transport." *Baloise Insurance Co., Ltd. v. United Airlines, Inc.*, 723 FSupp. 195, 199 (SDNY - 1989) (This case is also significant because it was decided after the deregulation of the airline industry). Thus, Federal courts have dealt with warehousing by the carrier before, during, and after transportation had been completed and, in every case, have held that the limitation of liability in the bill of lading still governs.

Admittedly, in the case at bar, the goods were placed in carrier's warehouse because delivery was refused by the consignee named in the bill of lading; but that does not change the fact that the goods remained in the possession of the carrier awaiting instructions from the shipper/consignor. As the Courts have repeatedly held, the bill of lading governs transportation until actual delivery; and "delivery" means actually placing the

goods in the hands of the consignee. *Cleveland, Cincinnati, Chicago, & St. Louis Railway Company v. Dettlebach*, 36 SCt at 179. The refusal of a consignee to accept the goods still leaves them in transit. There can be no doubt that transportation had not been completed. In other words (as stated in a case decided under Article 29 of the Warsaw Convention, but still comprising part of the federal common law), "So long as the goods remain in the air carrier's actual or constructive possession pursuant to the terms of the contract of carriage, the period of 'transportation by air' does not end." *Mangus Electronics, Inc. v. Royal Bank of Canada*, 611 FSupp. 436, 440 (USDC - NDIL 1985).

3. **Conclusion.** The decision of the Colorado Supreme Court letting stand the decision of the Colorado District Court contravenes well-established decisions of this Court and should be overturned.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that three copies of the foregoing pleading have been served upon counsel for Respondent by mailing the same to it by First Class United States Mail, properly addressed and postage prepaid on this 3d day of August, 1996.

All parties required to be served have been served.

Counsel for Respondent, Nancy R. Jellico, is:

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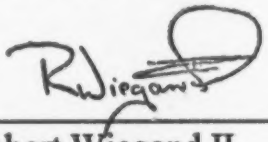

Robert Wiegand II

DOCKET No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

PILOT AIR FREIGHT CORP., McDONOUGH AIR CARGO, INC. d/b/a PILOT AIR FREIGHT CORP. **Petitioners**

NANCY R. JELLICO, d/b/a JELLICO STUDIO OF WESTERN ART, **Respondent**

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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SUPREME COURT, STATE OF COLORADO
CASE NO. 95 SC 506
CERTIORARI TO THE DISTRICT COURT, CITY AND COUNTY OF DENVER 94 CVC 3728
COUNTY COURT, CITY AND COUNTY OF DENVER, 5 R 3005

ORDER OF COURT

PILOT AIR FREIGHT CORP., a Pennsylvania corporation, and MCDONOUGH AIR CARGO, INC., d/b/a PILOT AIR FREIGHT CORP., a Colorado corporation,
Petitioners,
vs.
NANCY R. JELLICO, d/b/a JELLICO STUDIO OF WESTERN ART,
Respondent.

Upon consideration of the Record on Appeal, together with the Written and Oral Arguments of Counsel, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the Writ of Certiorari heretofore granted be, and is, DENIED as having been improvidently granted.

BY THE COURT, EN BANC, MAY 7, 1996.

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Case No. 94 CV 3728, Courtroom 10
Appeal from the County Court, City and County of Denver, Colorado, Case No. 94 5 R 3005

ORDER

DEFENDANT below brings this appeal of judgement for the PLAINTIFF below.

SUMMARY OF THE CASE

Plaintiff-Appellee Nancy Jellico is a local artist. On September 21, 1992, she used Defendant-Appellant Pilot Air Freight to ship a painting and a bronze sculpture to a show in California. She filled out a bill of lading and put $2,000 as the declared value.

In October 1992, Nadine Marshall, a volunteer at the art show, took the painting and sculpture to a place to be picked up by Pilot. The trial judge found Marshall had filled out Pilot's bill of lading but it was not signed by her. There was no declared value on the bill of lading. For unknown reasons, the addressee was not Jellico; it was an artist in Arizona. The Arizona artist refused delivery by Pilot. Pilot opened the box, discovered it belonged to Jellico, and shipped it to its warehouse in San Francisco.

Jellico called Nadine Marshall in late November to give her shipping instructions. That is when she found out her pieces were missing. Pilot in Denver discovered the pieces were in San Francisco. Jellico instructed Denver to tell Pilot in San Francisco to ship the artwork to Oregon. These faxed instructions were not a bill of lading. After San Francisco received the instructions, they discovered Jellico's pieces were missing or stolen. The trial judge found for Jellico in the amount of $10,000, plus interest and court costs.

ISSUES PRESENTED FOR REVIEW

I. When does a bill of lading cease to be in effect?

II. Alternatively, if the trial court's finding that the Nadine Marshall bill of lading was no longer in effect at the time of the loss is affirmed, should Jellico's damages be reduced from $10,000 to the $2,000 she declared on her shipment to California?

FINDINGS AND CONCLUSIONS

I. Pilot's position is that the Nadine Marshall bill of lading was still in effect at the time Jellico's pieces were lost. The trial judge found that the entire cycle concerning the shipment from California to Arizona was complete when Jellico's work was sent to Pilot's San Francisco warehouse. Therefore, the Marshall bill of lading was no longer in effect.

Pilot argues that the County Court erred in its conclusion because the Interstate Commerce Act defines

"transportation" to include "a ... warehouse, ... facility, ... related to the movement of ... property and services related to that movement, including ... storage." *Interstate Commerce Act*, Definitions, 49 U.S.C. sec. 10102(23). Pilot states there was no separate shipment "as changes in delivery instructions are an ordinary occurrence, and temporary storage during the course of a shipment awaiting further delivery instructions does not create a separate shipment." The shipment had been delivered to the consignee who refused shipment. Pilot's tariff defines "shipment" as "a single consignment ... from one shipper, at one time, at one address ... moving on one Pilot airbill to one consignee at one destination address." By the terms of its own tariff, the shipment had been completed when refused by the Arizona artist.

Pilot is absolutely liable for any actual loss which it caused. 49 U.S.C. sec. 11707(a)(1). Carriers can only limit their liability through a written agreement which evidences an absolute, deliberate and well-informed choice by the shipper. The burden is on the carrier to establish that its liability is limited. *Carmana Designs Ltd. v. North Amer. Van Lines, Inc.*, 943 F.2d 316, 319 (3rd Cir. 1991). The County Court did not commit error by finding Pilot failed to meet its burden of showing that plaintiff had made an absolute, deliberate and well-informed choice concerning any limitation of liability. The loss of Jellico's artwork occurred after the Arizona shipment was complete. Jellico was not given any opportunity to choose whether to allow Pilot to limit its

liability on the proposed shipment from San Francisco to Oregon.

II. The standard of review for setting aside an award of compensation is abuse of discretion. *Koontz v. Rosener*, 843 P.2d 1378 (Colo. 1993). At the time of its loss, Ms. Jellico's painting had been for sale for approximately three years. She testified at trial that it was worth $10,500. The missing sculpture was the fifteenth of a twenty cast series. She testified it was worth $1,500. She introduced into evidence a letter from an art gallery that gave the list prices for the pieces as being the same amount she testified to. She testified that the value of her pieces was based on her reputation and on sales records. The fact that Jellico chose to declare a $2,000 value on the pieces for one shipment is not conclusive as to their actual value. The County Court did not abuse its discretion in finding the values ascribed by Ms. Jellico at trial to her works were fair and reasonable.

The judgment is AFFIRMED.
Dated this 11th day of July, 1995.

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO
Case No. 94-5 R 3005, Courtroom 5, Civil Division
1515 Cleveland Place, 4th Floor, Denver, Colorado

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

NANCY R. JELLICO, d/b/a JELLICO STUDIO OF WESTERN ART,
Plaintiff

PILOT AIR FREIGHT CORP., a Pennsylvania corporation, and MCDONOUGH AIR CARGO, INC., d/b/a PILOT AIR FREIGHT CORP., a Colorado corporation,
Defendants

THIS MATTER came on for trial to the Court on March 28, 1994. Plaintiffs were represented by Charles J. Kimball, Esq., Atty. Reg. No. 1319. Defendants were represented by Robert Wiegand II, Esq., Atty. Reg. No. 7463. Following hearing on the merits, due to unique issues of law and fact, this Court took the case under advisement pursuant to Rule 352, C.R.C.P. The Court now makes the following findings of fact, conclusions of law and orders:

1. The only witness to testify, who had any familiarity with the facts in the case, was the Plaintiff. Plaintiff

is an artist, painter and sculptor who specializes in western old-time cowboy art. Plaintiff has been in this occupation since 1981. Plaintiff was the artist/owner of two items, which are the subject of this case: a bronze sculpture titled "Mustang", and a painting, titled "Night Hawk".

2. The Plaintiff's testimony and **Plaintiff's Exhibit 1**, which was received into evidence without objection, establish the sequence of events. Plaintiff testified that Defendants had shipped her art many times in the past, and were used to dealing with her. **Defendants' Exhibit 1** indicates that on September 21, 1992, Plaintiff caused "Mustang" and "Night Hawk" to be shipped to Santa Rosa, California for an art show. The bill of lading, No. 247135299, is typed, and fully completed by Plaintiff. It indicates the dimensions of "Mustang" and "Night Hawk," gives a declared value of $2,000, and is signed by the Plaintiff.

3. Apparently, a friend of Plaintiff's, Nadine Marshall, arranged for the shipment of "Night Hawk" and "Mustang" to another artist, a Connie Foss in Prescott, Arizona. It is unclear whether Plaintiff knew of this arrangement, or what the legal relationship was between Ms. Marshall and the Plaintiff. Nevertheless, on October 12, 1992, Ms. Marshall filled out Defendants' bill of lading No. 24837408 to ship "Mustang" and "Night Hawk" to Arizona. The bill of lading is handwritten, but not signed. No declared value is stated, and the description of "Mustang" and "Night Hawk" is simply "artwork -- 80 pounds." The terms of

payment were "COD -- DRIVER COLLECT." Defendants took delivery of the shipment from Mail Boxes, Etc., in Windsor, California.

4. From **Plaintiff's Exhibit 1** it is unrebutted that on October 21, 1992, Defendants attempted COD delivery to Ms. Foss, who refused the delivery. According to Plaintiff, Ms. Foss disputed whether the work was "hers" [Foss's] or not, and the Defendants' drivers took the artwork out of the boxes to verify what it was and to whom it belonged. Defendants' agents and drivers actually, or impliedly, discovered the artwork, "Mustang" and "Night Hawk," belonged to Plaintiff. Given the refusal of the shipment, by Foss, the drivers took the artwork back to the Defendants' warehouse.

5. Plaintiff testified she did not even know her artwork was missing until around Thanksgiving, 1992, when Plaintiff learned for the first time that Marshall had improperly shipped "Mustang" and "Night Hawk" to Foss in Prescott. At this time, she contacted Dan in the Defendants' Denver office to find out what happened to her artwork. Dan put her in touch with Carlos in the San Francisco office, who said that yes, "Mustang" and "Night Hawk" had been returned to the Defendants' docks, and had been sitting there, waiting for further instructions. It was Plaintiff's impression that at this time the artwork was located and at Defendants' docks. Plaintiff made arrangements with Dan, in Denver, to ship the artwork to Oregon. It appears that after Dan had made the

shipping arrangements for Plaintiff, then the artwork vanished off of the Defendants' docks. Searches for "Mustang" and "Night Hawk" in December 1992 and January 1993 were fruitless.

6. Plaintiff made her claim for "Mustang" and "Night Hawk" on March 19, 1993. She valued "Mustang" at $1,500.00 and "Night Hawk" at $10,500.00. It is for the amount of $12,000.00 that Plaintiff has brought the instant suit.

7. Defendants claim Plaintiff's claims are limited by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. sec. 11707. It is the Defendants' theory that somehow Plaintiff was the shipper of "Mustang" and "Night Hawk" on October 12, 1992, on Defendants' bill of lading No. 24837408. In fact, Nadine Marshall was the shipper, and Connie Foss was the consignee, who refused the shipment. The common carrier, Defendants herein, then took the refused shipment back to its warehouse to await further instructions. At this point, the entire cycle concerning the "lost" shipment from California to Arizona was completed. The shipment was not lost at this point.

8. Apparently further instructions came from Plaintiff through Dan in Denver to Carlos in San Francisco. There was no bill of lading with an express or implied limitation thereon for the shipment of the artwork in question from San Francisco to Oregon in November 1992. Before the

shipment could be effectuated, the artwork was either misplaced or stolen. This was due to the negligence of Defendants.

9. Since there was no bill of lading for the shipment of the artwork from San Francisco to Oregon in November 1992, the carrier cannot limit its liability since no notice was given of any attempt to limit liability to Plaintiff in this instance. In Anton v. Greyhound Van Lines, Inc., 591 F.2d 103 (1st Cir. 1978), the carrier was required to pay the full amount of the shipper's loss where she [the shipper] had not made an absolute, deliberate and well-informed choice concerning any limitation of liability notwithstanding the carrier's efforts to limit its liability pursuant to 49 U.S.C. sec. 11707. It is, of course, the burden of Defendants to establish that the requirements for limiting liability have been met. Acro Automation Systems v. Iscont Shipping Ltd., 706 F.Supp. 413 (D.Md.1989). Absent this evidentiary showing, the carrier **has absolute liability** for the actual loss or injury to the property pursuant to 49 U.S.C. sec. 11707(a)(1). Carmana Designs v. North American Van Lines, 943 F.2d 316 (3rd Cir. 1991).

10. In this case, since Defendants have failed to meet their burden of showing that Plaintiff had made an absolute, deliberate and well-informed choice concerning any limitation of liability, they have absolute liability for Plaintiff's actual loss or injury to the property pursuant to 49 U.S.C. sec. 11707(a)(1).

11. The court is aware of the Plaintiff's testimony that the painting titled "Night Hawk" had been for sale since 1990 and was unsold as of the date of the loss, and that the sculpture titled "Mustang" was the fifteenth of twenty similar casts of the same sculpture by her. However, an owner may testify as to the value of her property. Plaintiff says "Mustang" was worth $1,500.00 and "Night Hawk" was worth $10,500.00. There was no other testimony as to value. Therefore, the court finds that the values ascribed by the Plaintiff to her works of art are fair and reasonable values.

IT IS THEREFORE ORDERED that, based upon the foregoing findings of fact and conclusions of law that judgment enter in favor of Plaintiff, Nancy R. Jellico, d/b/a Jellico Studio of Western Art, and against the Defendants, Pilot Air Freight Corp., a Pennsylvania corporation, and McDonough Air Cargo, Inc., d/b/a Pilot Air Freight Corp., a Colorado corporation, for actual and compensatory damages in the sum of $10,000.00, together with interest thereon at the legal rate from date of judgment, and her court costs incurred herein. The parties are further advised that if the trial exhibits are not claimed within 35 days from this date, they will be destroyed.

DONE AND SIGNED THIS 5TH DAY OF JULY, 1994.

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49. TRANSPORTATION SUBTITLE IV. INTERSTATE COMMERCE CHAPTER 117. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

49 USCS § 11707 (1995)

§ 11707. Liability of common carriers under receipts and bills of lading

(a)(1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title and a freight forwarder shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier or freight forwarder and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II, or IV are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff filed

under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier or freight forwarder. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to receive property from a consignor, the motor common carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor common carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A common carrier and freight forwarder may not limit or be exempt from liability imposed under subsection (a)

of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, rule, or tariff filed with the Commission in violation of this section is void.

(2) If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(3) A common carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on passenger trains, boats, or motor vehicles, or on trains, or boats, or motor vehicles carrying passengers.

(4) A common carrier may limit its liability for loss or injury of property transported under section 10730 of this title [<=1> 49 USCS § 10730].

(d)(1) A civil action under this section may be brought against a delivering carrier (other than a rail carrier) in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a railroad or route.

(2) (A) A civil action under this section may only be brought--

(i) against the originating rail carrier, in the judicial district in which the point of origin is located;

(ii) against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located if the delivering carrier operates a railroad or a route through such judicial district, or in the judicial district in which the point of destination is located; and

(iii) against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(B) A civil action under this section may be brought in a United States district court or in a State court.

(C) In this section, "judicial district" means (i) in the case of a United States district court, a judicial district of the United States, and (ii) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) A carrier or freight forwarder may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier or freight forwarder gives a person written notice that the carrier or freight forwarder has disallowed any part of the claim specified in the notice. For the
purposes of this subsection--

(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier or freight forwarder, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such

disallowance; and

(2) communications received from a carrier's or freight forwarder's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier or freight forwarder.

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49. TRANSPORTATION SUBTITLE IV. INTERSTATE COMMERCE CHAPTER 107. RATES, TARIFFS, AND VALUATIONS SUBCHAPTER II. SPECIAL CIRCUMSTANCES

49 USCS § 10730 (1995)

§10730. Rates and liability based on value

(a) The Interstate Commerce Commission by a household goods freight forwarder may require or authorize a carrier (including a motor common carrier of household goods but excluding any other motor common carrier of property and excluding any rail carrier) providing transportation or service subject to its jurisdiction under subchapter I, II, or IV of chapter 105 of this title [<=1> 49 USCS §§ 10501 et seq., 10521 et seq., or 10561 et seq.], to establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation. A rate may be made applicable under this section to livestock only if the livestock is valuable chiefly for breeding, racing, show purposes, or other special uses. A tariff filed with the Commission under subchapter IV of this chapter [<=2> 49 USCS §§ 10761 et seq.] shall refer specifically to the action of the Commission under this section.

(b)(1) Subject to the provisions of paragraph (2) of this subsection, a motor common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title [<=3> 49 USCS §§ 10521 et seq.] or a freight forwarder may, subject to the provisions of this chapter (including, with respect to a motor carrier, the general tariff requirements of section 10762 of this title [<=4> 49 USCS § 10762]), establish rates for the transportation of property (other than household goods) under which the liability of the carrier or freight forwarder for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier or freight forwarder and shipper if that value would be reasonable under the circumstances surrounding the transportation.

(2) Before a carrier or freight forwarder may establish a rate for any service under paragraph (1) of this subsection, the Commission may require such carrier or freight forwarder to have in effect and keep in effect, during any period such rate is in effect under such paragraph, a rate for such service which does not limit the liability of the carrier or freight forwarder.

(c) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title [<=5> 49 USCS §§ 10501 et seq.] may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for

specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49. TRANSPORTATION SUBTITLE IV. INTERSTATE COMMERCE CHAPTER 101. GENERAL PROVISIONS

49 USCS § 10102 (1995)

§10102. Definitions

In this subtitle--

(28) "transportation" includes--

(A) a locomotive, car, vehicle, motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49 APPENDIX. TRANSPORTATION CHAPTER 4. BILLS OF LADING

49 USCS Appx § 81 (1995)

§81. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Aug. 29, 1916, ch 415, § 1, 39 Stat. 538) was repealed by Act July 5, 1994, P.L. 103-272, § 7(b), 108 Stat. 1379, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before enactment, as provided by § 7(b) of such Act, which appears as a note preceding <=1> 49 USCS § 101. The section provided for transportation included. The subject matter formerly covered in this section is now covered generally in 49 USCS § 80101 et seq.

CROSS REFERENCES

This chapter is referred to in 46 USCS Appx. § 1303.

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§ 81. Transportation included

Bills of lading issued by any common carrier for the transportation o goods in any Territory of the United States, or the District of Columbia, o from a place in a State to a place in a foreign country, or from a place i one State to a place in another State, or from a place in one State to place in the same State through another State or foreign country, shall b governed by this Act [49 USCS Appx. §§ 81 et seq.].
(Aug. 29, 1916, ch 415, § 1, 39 Stat. 538.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
Act Aug. 29, 1916, ch 415, § 45, 39 Stat. 545, provided that this Act [49 USCS §§ 81 et seq.] shall take effect and be in force on and after the first day of January next after its passage.

Short titles:
Act Aug. 29, 1916, ch 415, 39 Stat. 518 [49 USCS Appx. §§ 81 et seq.], is popularly known as the Pomerene Bills of Lading Act.

CODE OF FEDERAL REGULATIONS

Transportation of household goods in interstate or foreign commerce, 49 CFR Part 1056.

RESEARCH GUIDE

Am Jur:
13 Am Jur 2d, Carriers § 264.
15A Am Jur 2d, Commerical Code § 43.

Am Jur Proof of Facts:
12 Am Jur Proof of Facts 2d, Status as Common Carrier Rather Than Warehousemen, p. 1.

Forms:
16 Fed Procedural Forms L Ed, Transportation §§ 66:2, 152.

Law Review Articles:
Heard, Pomerene Act—False Bills of Lading—Applicability to Bills of Lading for Shipments to the United States. 20 J Mar L & Com 87, January, 1989.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality
2. Purpose
3. Construction
4. Applicability
5. Relationship with other laws
6. Preemption of state law
7. "Common carriers"
8. Liabilities of common carriers
9. Transportation of goods
10. Delivery of goods
11. Modification of bills by parol evidence

1. Constitutionality

Bills of lading for movement of interstate commerce are instrumentalities of that commerce which Congress has authority to deal with. United States v Ferger (1919) 250 US 199, 63 L Ed 936, 39 S Ct 445.

2. Purpose

Purpose of 49 USCS Appx §§ 81–124 is to render bills of lading negotiable. Chicago & N. W. R. Co. v Bewsher (1925, CA8 Neb) 6 F2d 947, cert den 270 US 641, 70 L Ed 775, 46 S Ct 205.

3. Construction

Interpretation of bill of lading is controlled by federal law, not by law of state where bill of lading is signed. National Garment Co. v New York, C. & S. L. R. Co. (1949, CA8 Mo) 173 F2d 32; Bedig v Southern Pacific Co. (1927) 84 Cal App 325, 258 P 148.

Construction of 49 USCS Appx §§ 81–124 by United States courts is controlling, and courts of various states are bound to follow this construction. Davis v Fruita Mercantile Co. (1923) 74 Colo 247, 220 P 983; Morse-Hubbard Co. v Michigan C. R. Co. (1936) 286 Ill App 163, 3 NE2d 93.

Questions of construction and effect of interstate bills of lading are controlled by 49 USCS Appx §§ 81–124. Kasden v New York, N. H. & H. R. Co. (1926) 104 Conn 479, 133 A 573.

Proper construction of bill of lading is federal question. M. & T. Trust Co. v Export S. S. Corp. (1933) 262 NY 92, 186 NE 214, cert den 290 US 650, 78 L Ed 563, 54 S Ct 70.

4. Applicability

Shipments in interstate commerce are governed by 49 USCS Appx §§ 81–124. George F. Hinrichs v Standard Trust & Sav. Bank (1922, CA2 NY) 279 F 382, cert den 258 US 629, 66 L Ed 800, 42 S Ct 462; Dock & Mill Co. v Southern R. Co. (1930, Mo App) 23 SW2d 202; Chicago S. P. M. & O. R. Co. v McDougald (1924) 184 Wis 227, 199 NW 68.

Pomerene Act (49 USCS Appx §§ 81–124) is not applicable to bills of lading issued in foreign ports. Portland Fish Co. v States S.S. Co. (1974, CA9 Or) 510 F2d 628 (disagreed with by United States v Castro (CA11 Fla) 829 F2d 1038, 1989 AMC 1518, reh den, corrected (CA11 Fla) 837 F2d 441); Archibald & Lewis Co. v Banque Internationale de Commerce (1926) 216 App Div 322, 214 NYS 366.

Although Pomerene Bills of Lading Act (49 USCS Appx §§ 81 et seq.) is applicable, where carrier is to deliver goods on C.O.D. basis, to common carrier's duty to transport goods, and although Act sets standards on such matters as loading, delivery, and contents of bill in such situations, Act does not cover collection duties which are established and governed solely by private contract. Littleton Stamp & Coin Co. v Delta Airlines, Inc. (1985, CA1 NH) 778 F2d 53.

Liability of carrier for misdelivery of interstate shipment must be determined under 49 USCS Appx §§ 81–124. Carter v St. Louis S. F. R. Co. (1929) 179 Ark 865, 18 SW2d 376; Freedman v George W. Bush & Sons Co. (1925) 284 Pa 16, 130 A 263.

Laws respecting charges for transportation in interstate commerce must be decided according to Federal Uniform Bills of Lading Act, 49 USCS Appx §§ 81–124, so far as it is applicable. Hayden v Wabash R. Co. (1933) 269 Ill App 356.

Rights of parties in any action upon bills of lading issued by common carrier for transportation of goods in interstate commerce are governed by 49 USCS Appx §§ 81–124. Chesapeake & O. R. Co. v State Nat. Bank (1939) 280 Ky 444, 133 SW2d 511, 130 ALR 1306; Canal-Commercial Trust & Sav. Bank v New Orleans, T. & M. R. Co. (1926) 161 La 1051, 109 So 834, 49 ALR 274.

Purchaser of shipment which is en route becomes consignee and his relationship to carrier and shipment is as defined by bill of lading and 49 USCS Appx §§ 81–124. Carollo v Railway Express Agency, Inc. (1935, Lucas Co) 52 Ohio App 272, 6 Ohio Ops 351, 21 Ohio L Abs 552, 3 NE2d 659.

5. Relationship with other laws

Harter Act, 46 USCS Appx §§ 190–196, prohibiting certain limitations on carrier's liability, was not modified by provisions of 49 USCS Appx §§ 81-124. Mississippi Valley Barge Line Co. v Inland Waterways Shippers Asso. (1961, CA8 Mo) 289 F2d 374, cert den 368 US 876, 7 L Ed 2d 77, 82 S Ct 123.

There is difference between criminal law of possession and commercial law of possession and title, and 49 USCS Appx §§ 81 et seq. are inapplicable in determining issue of possession for purposes of venue of prosecution for possession of controlled substance under 21 USCS § 841(a)(1). United States v Boney (1978, CA2 NY) 572 F2d 397.

Fact that Warsaw Convention applies to action alleging liability of airline for damages caused by plaintiff's detrimental reliance upon air way, bills, does not preclude claim founded on Federal Bill of Lading Act (49 USCS Appx §§ 81 et seq.). Gensplit Finance Corp. v Pan American World Airways, Inc. (1984, ED Wis) 581 F Supp 1241.

6. Preemption of state law

For purposes of carrier's suit against consignor to recover freight charges for transportation of cement in intrastate commerce, District Court will look for guidance to analogous situations covered by common law and Uniform Commercial Code even though Bills of Lading Act (49 USCS Appx § 81) pre-empts field regarding questions of law pertaining to interstate shipment, where there is no applicable federal law. Carna v Bessemer Cement Co. (1983, WD Pa) 558 F Supp 706. 35 UCCRS 1410.

As to interstate shipment, 49 USCS Appx §§ 81–124 supersede state laws. Browne v Union P. R. Co. (1923) 113 Kan 726, 216 P 299, affd 267 US 255, 69 L Ed 601, 45 S Ct 315; First Nat. Bank v Tchula Commercial Co. (1923) 132 Miss 58, 95 So 742; Dock & Mill Co. v Southern R. Co. (1930, Mo App) 23 SW2d 202.

7. "Common carriers"

Vessel was "carrier" within meaning of 46 USCS § 1301(a) and 49 USCS Appx §§ 81 et seq. where (1) vessel transported and discharged cargo, (2) bill of lading was issued for master and (3) no contractual relationship existed absolving ship and its owner from liability for cargo. Industria Nacional Del Papel, CA. v M/V "Albert F" (1984, CA11 Fla) 730 F2d 622, 1985 AMC 1437, cert den 469 US 1037, 83 L Ed 2d 404, 105 S Ct 515, 1985 AMC 2397.

Barge hired by shipper to transfer goods covered by bill of lading from one steamer to another is private carrier rather than common carrier. The Bowling Green (1935, DC NY) 11 F Supp 109, affd (CA2 NY) 81 F2d 1017.

8. Liabilities of common carriers

Uniform straight bill of lading issued by initial carrier governs entire transportation and fixes rights of all participating carriers, including terminal carrier. Rice & Lockwood Lumber Co. v Boston & M. R. R. (1941) 308 Mass 101, 31 NE2d 219.

Initial carrier is liable for acts of terminal carrier under Federal Uniform Bills of Lading Act, 49 USCS Appx §§ 81–124, where shipments are between States. Kemper Mill & Elevator Co. v Hines (1922) 293 Mo 88, 239 SW 803.

9. Transportation of goods

Company's services as clearing house which do not have direct relation to transportation of crude oil and are provided for convenience of crude oil resellers or recording of in-line transfers, which occur prior to time of shipment, which is bookkeeping or clearing house function provided gratuitously by company for crude oil resellers are not services incidental to physical movement of property sufficiently related to transportation under 49 USCS Appx § 81 or 49 USCS § 11707. Coastal States Trading, Inc. v Shell Pipeline Corp. (1983, SD Tex) 573 F Supp 1415.

Neither issuance of bill of lading nor character of bill is determinative of whether or not goods are transported in interstate commerce. Pitman v Yazoo & M. V. R. Co. (1935) 171 Miss 799, 158 So 547.

10. Delivery of goods

In absence of special contract or usage, carrier of shipment between states need not make personal delivery to consignee, but may carry goods to depot or station to which they are destined, put goods in warehouse or other place of safety and hold goods ready for delivery when called for by consignee after notifying consignee of its readiness to deliver. Burton v Wabash R. Co. (1933) 332 Mo 268, 58 SW2d 443.

11. Modification of bills by parol evidence

Bill of lading cannot be varied by parol testimony. Kemper Mill & Elevator Co. v Hines (1922) 293 Mo 88, 239 SW 803.

Shipper who allegedly delivered to carrier 20 cases of meat, weighing 1,263 pounds, was entitled to submit parol evidence to such effect, though bill of lading recited 15 cases, weighing 1,263 pounds. Agar Packing & Provision Co. v Weldon (1956) 42 Tenn App 175, 300 SW2d 51, 67 ALR2d 1023.

Presumption that consignee named in bill of lading has title to shipment may be rebutted by parol evidence. Pacific Lumber Agency v National Aircraft Materials Corp. (1936) 108 Vt 10, 182 A 192.

§ 82. Straight bill of lading

A bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.
(Aug. 29, 1916, ch 415, § 2, 39 Stat. 539.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Aug. 29, 1916, ch 415, § 45, 39 Stat. 545, provided that this section shall take effect and be in force on and after the first day of January next after its passage.

RESEARCH GUIDE

Am Jur:

13 Am Jur 2d, Carriers § 265.

15A Am Jur 2d, Commerical Code § 43.

Forms:

19 Am Jur Legal Forms 2d, Uniform Commercial Code § 253:2693.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Classification as straight bill
3. Rights and liabilities during shipment
4. Rights and liabilities upon delivery

1. Generally

Straight bill is assignable. Bedig v Southern Pacific Co. (1927) 84 Cal App 325, 258 P 148.

Rights arising out of straight or nonnegotiable bills of lading are essentially different from those arising from "shipper's order," or negotiable bills of lading. Erskine Williams Lumber Co. v John I. Hay & Co. (1935, La App) 160 So 650.

Uniform straight bill of lading issued by initial carrier governs entire transportation and fixes rights of all participating carriers, including terminal carrier. Rice & Lockwood Lumber Co. v Boston & M. R. R. (1941) 308 Mass 101, 31 NE2d 219.

Uniform straight bill of lading under which goods are shipped constitutes contract, and shipper's recovery, if any, from carrier for damaged goods is limited by terms of bill. Chicago, R. I. & P. R. Co. v Geissler (1936) 177 Okla 560, 61 P2d 14.

2. Classification as straight bill

Bill of lading for shipment of poultry, naming seller as both consignor and consignee, with directions to spot car at place of buyer, is straight bill of lading. Estherville Produce Co. v Chicago R. I. & P. R. Co. (1932, CA8 Iowa) 57 F2d 50.

Nonnegotiable express receipt naming consignor as consignee, but giving instructions for notice and surrender to another, is straight bill of lading. Wall v American R. E. Co. (1925) 220 Mo App 989, 272 SW 76, later app (Mo App) 291 SW 161.

Bill of lading having all elements of straight bill, except that it is on yellow and not white paper, and contains expression "notify" specified company, could be properly classified as straight bill. Rountree v Lydick-Barmann Co. (1941, Tex Civ App) 150 SW2d 173, writ dism w o j.

3. Rights and liabilities during shipment

Consignor was lawfully entitled to possession of goods shipped under straight bill of lading and railroad was not liable to transferee for conversion, where check from intermediate transferee to consignor in payment for shipment was returned for insufficient funds and shipment was diverted by railroad prior to delivery to transferee upon issuance of reconsignment order by consignor; while straight bills are transferable, transferee acquired no greater rights than those held by intermediate transferee who is not bona fide purchaser for value, and carrier could redirect shipment in transit to person lawfully entitled to possession upon failure of checks, the consignor. Clock v Missouri K. T. R. Co. (1976, ED Mo) 407 F Supp 448, 19 UCCRS 224, affd without op (CA8 Mo) 553 F2d 102.

3. Failure to respond to notice

In transportation of goods under bill of lading in which shipper is named as consignor and consignee and in which notice is to be given to third party, carrier is not bound to notify shipper that such third party fails to respond to notice when given. Trinidad Bean & Elevator Co. v Pennsylvania R. Co. (1934, CA3 Pa) 72 F2d 371.

§ 88. Duty to deliver goods on demand; refusal

A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

(Aug. 29, 1916, ch 415, § 8, 39 Stat. 539.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Aug. 29, 1916, ch 415, § 45, 39 Stat. 545, provided that this section shall take effect and be in force on and after the first day of January next after its passage.

RESEARCH GUIDE

Am Jur:

13 Am Jur 2d, Carriers §§ 417, 419.

15A Am Jur 2d, Commerical Code § 43.

INTERPRETIVE NOTES AND DECISIONS

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2. Carrier's duty to take up bill of lading
3. Satisfaction of carrier's lien
4. Carrier's duty to deliver goods
5. —What constitutes delivery
6. Diversion or stoppage
7. Delivery as affected by custom
8. Misdelivery
9. —Damages

1. Generally

Duty of carrier to deliver, and of consignee to accept, are reciprocal. Crinella v Northwestern P. R. Co. (1927) 85 Cal App 440, 259 P 774.

2. Carrier's duty to take up bill of lading

Federal Bills of Lading Act, 49 USCS Appx §§ 81-124, impose upon carrier specific duty to shipper to take up bill of lading before making delivery, but under § 88 carrier is not obliged to

§ 89. Delivery; when justified

A carrier is justified, subject to the provisions of the three following sections [49 USCS Appx §§ 90, 91, 92], in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

(Aug. 29, 1916, ch 415, § 9, 39 Stat. 540.)

CROSS REFERENCES

Liability for delivery to person not entitled thereto, 49 USCS Appx. § 90.
Liability for delivery without cancellation of bill, 49 USCS Appx. § 91.
Liability in case of delivery of part of goods, 49 USCS Appx. § 92.
This section is referred to in 49 USCS Appx. §§ 90, 99.

RESEARCH GUIDE

Am Jur:
13 Am Jur 2d, Carriers §§ 417–419, 423, 448.
15A Am Jur 2d, Commerical Code § 43.

INTERPRETIVE NOTES AND DECISIONS

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2. Place of delivery

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3. Generally
4. Surrender of bill unnecessary
5. Misdelivery
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III. DELIVERY UNDER STRAIGHT BILL OF LADING

7. Applicable law
8. Control of goods during shipment
9. Surrender of bill
10. Acts effecting delivery
11. Misdelivery
12. Delivery effected by fraud
13. Liability after delivery
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IV. DELIVERY UNDER ORDER BILL OF LADING

15. Possession of bill
16. Delivery without surrender of bill
17. Persons entitled to delivery
18. Delivery effected by fraud

I. IN GENERAL

1. Generally

Carrier failed to sustain his burden of proof that he delivered goods to the consignee named in a straight bill of lading, or a person lawfully entitled to the possession of the goods, pursuant to 49 USCS Appx § 89, where evidence showed that shipper instructed carrier to ship goods to particular destination and to hold them there for his pickup, but defendant-carrier delivered the goods at another point, listed on the bill as shipper's street address, and where defendant offered no evidence that the person who signed for the goods was either the owner of the equipment or entitled to its possession. Richardson v Railway Express Agency, Inc. (1971) 258 Or 170, 482 P2d 176.

In determining whether carrier is liable for misdelivery of goods shipped interstate, consider-

ation should be given to 49 USCS Appx §§ 89 and 90. Freedman v George W. Bush & Sons Co. (1925) 284 Pa 16, 130 A 263.

2. Place of delivery

Place of delivery means point of loading or unloading, but this construction must be interpreted to mean that there shall always be accorded to carrier reasonably immediate access to point of loading or unloading. Jarka Corp. of Baltimore v Pennsylvania R. Co. (1942, CA4 Md) 130 F2d 804.

II. DELIVERY TO PERSON ENTITLED TO POSSESSION

3. Generally

Person lawfully entitled to possession of goods under 49 USCS Appx § 89(a) refers to person lawfully entitled to possession as between adverse claimants. Chandler Motor Car Co. v United Fruit Co. (1926) 127 Misc 432, 216 NYS 413.

4. Surrender of bill unnecessary

Bill of lading need not be surrendered, where delivery is to one lawfully entitled to possession of goods. Fleming v St. Louis S. R. Co. (1929, Tex Civ App) 13 SW2d 440.

5. Misdelivery

Carrier is liable in damages for delivery of shipment to one which it knows is not true owner. Turner Lumber & Invest. Co. v Chicago, R. I. & P. R. Co. (1929) 223 Mo App 564, 16 SW2d 705.

6. Defenses

Carrier transporting merchandise in interstate commerce has right to deliver goods to true owner, and such delivery is defense to action by shipper who holds order bill of lading. Stefani v Southern Pacific Co. (1931) 119 Cal App 69, 5 P2d 946.

Delivery of goods to true owner exonerates carrier from liability to consignor holding order bill directing delivery to himself as consignee. Banik v Chicago, M. & S. P. R. Co. (1920) 147 Minn 175, 179 NW 899.

Delivery to true owner is defense to claim of misdelivery, irrespective of bill of lading. Turner Lumber & Invest Co. v Chicago R. I. & P. R. Co. (1931) 225 Mo App 1002, 34 SW2d 1009.

Where shipper consigned goods on a shipper's order bill of lading and retained the bill of lading in his possession, the delivery of the goods without obtaining the bill of lading properly endorsed was a delivery to a person entitled to possession, where it was shown that such delivery was in conformity with an agreement between the shipper and consignee to the effect that the consignee would accept and unload the goods for the purpose of testing and possible future sale of the goods to the consignee and, on the failure to agree on the price, consignee agreed to reload the goods at the consignor's expense. Elgin Mills, Inc. v Chicago & N. W. R. Co. (1964) 177 Neb 110, 128 NW2d 384.

Carrier is not liable to shipper, who is named as consignee in order bill, for delivery to buyer notify-party without requiring surrender of bill, where buyer is true owner of goods, in that buyer's f.o.b. contract with shipper passes title in goods to buyer from moment of delivery to carrier. Miller v New York C. R. Co. (1923) 205 App Div 663, 200 NYS 287.

III. DELIVERY UNDER STRAIGHT BILL OF LADING

7. Applicable law

Straight, nonnegotiable bills of lading, so marked upon their face, are not governed by local statutes, but by federal law, particularly 49 USCS Appx §§ 82, 86, 88–90, and 102. Bedig v Southern Pacific Co. (1927) 84 Cal App 325, 258 P 148.

Rights of parties under uniform straight bill of lading are to be determined by bill of lading and common law principles accepted and enforced by federal courts. Rice & Lockwood Lumber Co. v Boston & M. R. R. (1941) 308 Mass 101, 31 NE2d 219.

Carrier is liable to consignor, who ships goods under straight bill of lading, for losses which result from delivery made by carrier under any other conditions than those provided in 49 USCS Appx §§ 88 and 89. Rountree v Lydick-Barmann Co. (1941, Tex Civ App) 150 SW2d 173, writ dism w o j.

8. Control of goods during shipment

Consignor shipping under straight bill of lading retains control over goods, and he has right to stop them in transit; consignee in straight bill has right to divert or stop goods during transportation, subject to qualification that he does not possess this right where carrier has been requested by person having right of property not to permit it. Southern Pac. Co. v Agencia Joffroy, S. A. (1946) 65 Ariz 65, 174 P2d 278.

Consignor who ships under straight bill retains control over goods, and he can reclaim them, convey them to third party, or stop them in transitu, or they can be levied upon or attached by his creditors. Tennessee Egg Co. v Monroe (1925) 151 Tenn 121, 268 SW 372, cert den 269 US 580, 70 L Ed 422, 46 S Ct 105.

9. Surrender of bill

Carrier need not require surrender of bills of lading before making delivery of shipments, where goods are shipped under straight bill of lading and delivery is made to consignee named in bill. Erskine Williams Lumber Co. v John I. Hay & Co. (1935, La App) 160 So 650.

Carrier is under no duty to consignee or consignor to demand surrender of straight bill of lading prior to delivery on order of consignee. Utley v Lehigh V. R. Co. (1928) 292 Pa 251, 141 A 53.

10. Acts effecting delivery

In shipping goods under straight bill of lading, where goods are consigned to named consignee in care of third party, delivery to third party will fully discharge carrier's obligation. Erskine Williams Lumber Co. v John I. Hay & Co. (1935, La App) 160 So 650; Rountree v Lydick-Barmann Co. (1941, Tex Civ App) 150 SW2d 173, writ dism w o j.

11. Misdelivery

Express company, as carrier, is liable to consignor named as consignee in express receipt which constitutes straight bill, on delivery of goods to another not entitled to possession. Wall v American R. E. Co. (1925) 220 Mo App 989, 272 SW 76, later app (Mo App) 291 SW 161.

Carrier's duty to deliver cargo under straight bill of lading is breached when delivery is not made to right person, at proper time and in proper manner; parenthetical matter inserted in bill after name of warehouse consignee, indicating identity of ultimate receiver of goods after warehouse's reconsignment, does not make carrier's delivery at street corner to stranger not named in bill nor shown by record to have presented any credentials or authority a valid delivery. Refrigerated Transport Co. v Hernando Packing Co. (1976, Tenn) 544 SW2d 613.

12. Delivery effected by fraud

Carrier is justified in delivering goods to consignee who is named in straight bill and is real owner of goods, even though consignee acquired title to goods through fraud perpetrated on consignor, where carrier has no actual knowledge of fraud. Chicago, M., St. P. & P. R. Co. v Flanders (1932, CA8 Iowa) 56 F2d 114.

Carrier is justified in delivering goods to agent of consignor upon agents' surrender of consignor's straight bill of lading, even though agent had, unknown to carrier, procured shipment from consignor by fictitious order in name of another with intent to convert goods to his own use. Swift v Davis (1922) 118 Misc 205, 193 NYS 848.

13. Liability after delivery

Carrier completes delivery of goods shipped to consignee under straight bill of lading upon placing goods at consignee's private siding for partial unloading, and carrier is not liable to consignor for subsequent damage to goods. Rice & Lockwood Lumber Co. v Boston & M. R. R. (1941) 308 Mass 101, 31 NE2d 219.

Upon acceptance of delivery by consignee, liability of carrier ceases, and subsequent movement of goods by carrier at request of consignee would not give rise to liability on part of carrier to shipper. Continental Tanners, Inc. v Gonic Footwear, Inc. (1965) 106 NH 297, 210 A2d 480.

14. Liability of initial carrier

Initial carrier is liable for act of connecting carrier in delivering goods to consignee named in straight bill, after direction by shipper not to deliver until price had been paid. Louisville & N. R. Co. v Campbell Lumber Co. (1932) 45 Ga App 851, 166 SE 252.

IV. DELIVERY UNDER ORDER BILL OF LADING

15. Possession of bill

Prior to enactment of Federal Uniform Bills of Lading Act, 49 USCS Appx §§ 81–124, carrier was not ordinarily relieved from liability to consignor or owner for delivery of goods to person not legally entitled to receive them, even though such person was in possession of order bill of lading duly endorsed in blank, surrendered to carrier at time of delivery; under 49 USCS Appx § 89, carrier is justified in delivering goods to any person in physicial possession of order bill endorsed in blank, and it is immaterial in what capacity person holds possession of bill and whether he holds it lawfully or unlawfully, so long as carrier has no notice of any infirmity of title. Pere Marquette R. Co. v J. F. French & Co. (1921) 254 US 538, 65 L Ed 391, 41 S Ct 195.

16. Delivery without surrender of bill

Consignor taking shipper's order-notify bill, and holding same through bank with draft attached, could authorize notify-party as his agent to receive delivery from carrier without surrendering bill, provided consignor is holder of bill, and such agency need not be evidenced by writing. Kemper Mill & Elevator Co. v Hines (1922) 293 Mo 88, 239 SW 803.

17. Persons entitled to delivery

One holding bill of lading as collateral security is entitled to delivery of goods. First Nat. Bank v Missouri P. R. Co. (1925) 220 Mo App 941, 278 SW 1075.

18. Delivery effected by fraud

Railroad is not justified as matter of law to deliver merchandise to buyer, holder of order bill, where manufacturer of goods erroneously sent unendorsed bill of lading to buyer instead of seller, and buyer presented bill to railroad with alleged forged indorsement thereon. Adel Precision Products Corp. v Grand T. W. R. Co. (1952) 332 Mich 519, 51 NW2d 922, cert den 344 US 831, 97 L Ed 647, 73 S Ct 38.

INTERPRETIVE NOTES AND DECISIONS

1. Bill
2. Consignee
3. Consignor

1. Bill

"Through" bill of lading is one whereby freight forwarder agrees to transport goods from point of origin to designated point of destination, although such transportation may extend over lines of connecting carriers. Lifschultz v United States (1956, DC NY) 144 F Supp 606.

2. Consignee

Buyer who has right to inspect goods and right to claim delivery upon production of bill of lading may be treated by carrier as consignee, at least in respect to notice. Porter v Pennsylvania R. Co. (1926) 217 App Div 49, 215 NYS 727, later app 224 App Div 440, 231 NYS 432.

Under 49 USCS § 122, straight, nonnegotiable bill, showing by memorandum upon its face that delivery was to be made to party, fixes status of such party as consignee. Atchison, T. & S. F. R. Co. v Tulsa Rig, Reel & Mfg. Co. (1923) 99 Okla 40, 225 P 696.

3. Consignor

In action where purchaser contracted to purchase lumber from buyer, purchaser contracted with carrier for delivery of lumber, and only contact between seller and carrier occurred when carrier picked up lumber at seller's yard, carrier is not entitled to recover unpaid freight charges from seller since, in absence of evidence of implied-in-fact contract between seller and carrier, purchaser, admittedly consignee, was also shipper. Thunderbird Motor Freight Lines, Inc. v Seaman Timber Co. (1984, CA11 Ala) 734 F2d 630.

Lumbermen who receive order in writing for lumber on form designating them as shipper and who make shipment on bill of lading issued by initial carrier signed by lumbermen as shipper are consignors as matter of law. Pennsylvania R. Co. v Adams Mercantile Co. (1944) 245 Ala 268, 16 So 2d 796.

§ 123. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Aug. 29, 1916, ch 415, § 43, 39 Stat. 545) was omitted as it is no longer classified to the United States Code. It provided that provisions of 49 USCS Appx. §§ 81 et seq. should not apply to bills made and delivered prior to January 1, 1917.

§ 124. Invalidity of part of 49 USCS Appx. §§ 81 et seq.

The provisions and each part thereof and the sections and each part thereof of this Act [49 USCS Appx. §§ 81 et seq.] are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.
(Aug. 29, 1916, ch 415, § 44, 39 Stat. 545.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
Act Aug. 29, 1916, ch 415, § 45, 39 Stat. 545, provided that this section shall take effect and be in force on and after the first day of January next after its passage.

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that finding of guilt must be supported by entire evidence beyond reasonable doubt. Jackson v United States (1920, CA9 Wash) 266 F 770, cert den 254 US 649, 65 L Ed 456, 41 S Ct 63.

Court may instruct jury that if defendant employer originated scheme for forging and uttering forged bills of lading, and then aided his employee in commission of acts charged, then employer would be criminally responsible for acts of employee, where such instruction does not preclude finding that employer had entirely withdrawn from unlawful practices, and had order his employee to stop. Wellman v United States (1924, CA6 Mich) 297 F 925, 2 Ohio L Abs 530.

12. Nature of offense

Provision under 18 USCS § 1 that any offense punishable by imprisonment for term exceeding one year is felony, makes offense under 49 USCS Appx § 121 felony, even though designated as misdemeanor, and penalty under § 121 remains unchanged. United States v Chesapeake & O. R. Co. (1955, CA4 Va) 224 F2d 443, revd on other grounds 352 US 77, 1 L Ed 2d 140, 77 S Ct 172.

§ 122. Definitions

In this Act [49 USCS Appx. §§ 81 et seq.], unless the context of subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this Act [49 USCS Appx. §§ 81 et seq.].

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment. "Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any territory, District, insular possession, or isthmian possession.

(Aug. 29, 1916, ch 415, § 42, 39 Stat. 545.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Act Aug. 29, 1916, ch 415, § 45, 39 Stat. 545, provided that this section shall take effect and be in force on and after the first day of January next after its passage.

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49. TRANSPORTATION
SUBTITLE X. MISCELLANEOUS
CHAPTER 801. BILLS OF LADING

49 USCS @ 80101 (1995)

@ 80101. Definitions

In this chapter--

(1) "consignee" means the person named in a bill of lading as the person to whom the goods are to be delivered.

(2) "consignor" means the person named in a bill of lading as the person from whom the goods have been received for shipment.

(3) "goods" means merchandise or personal property that has been, is being, or will be transported.

(4) "holder" means a person having possession of, and a property right in, a bill of lading.

(5) "order" means an order by indorsement on a bill of lading.

(6) "purchase" includes taking by mortgage or pledge.

(7) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

HISTORY: (July 5, 1994, P.L. 103-272, @ 1(e), 108 Stat. 1346.)

INTERPRETIVE NOTES AND DECISIONS

1. Bill

"Through" bill of lading is one whereby freight forwarder agrees to transport goods from point of origin to designated point of destination, although such transportation may extend over lines of connecting carriers. Lifschultz v United States (1956, DC NY) 144 F Supp 606.

2. Consignee

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*** THIS SECTION IS CURRENT THROUGH P.L. 104-12, APPROVED 05/18/95 ***
TITLE 49. TRANSPORTATION
SUBTITLE X. MISCELLANEOUS
CHAPTER 801. BILLS OF LADING

49 USCS § 80102 (1995)

§ 80102. Application

This chapter applies to a bill of lading when the bill is issued by a common carrier for the transportation of goods--

(1) between a place in the District of Columbia and another place in the District of Columbia;

(2) between a place in a territory or possession of the United States and another place in the same territory or possession;

(3) between a place in a State and a place in another State;

(4) between a place in a State and a place in the same State through another State or a foreign country; or

(5) from a place in a State to a place in a foreign country.

HISTORY: (July 5, 1994, P.L. 103-272, § 1(e), 108 Stat. 1346.)

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality

Bills of lading for movement of interstate commerce are instrumentalities of that commerce which Congress has authority to deal with. United States v Ferger (1919) 250 US

199, 63 L Ed 936, 39 S Ct 445.

2. Purpose

Purpose of former 49 USCS Appx §§ 81--124 is to render bills of lading negotiable. Chicago & N. W. R. Co. v Bewsher (1925, CA8 Neb) 6 F2d 947, cert den <=5> 270 US 641, 70 L Ed 775, 46 S Ct 205.

3. Construction

Interpretation of bill of lading is controlled by federal law, not by law of state where bill of lading is signed. National Garment Co. v New York, C. & S. L. R. Co. (1949, CA8 Mo) 173 F2d 32; <=7> Bedig v Southern Pacific Co. (1927) 84 Cal App 325, 258 P 148.

Construction of former 49 USCS Appx §§ 81--124 by United States courts is controlling, and courts of various states are bound to follow this construction. Davis v Fruita Mercantile Co. (1923) 74 Colo 247, 220 P 983; Morse-Hubbard Co. v Michigan C. R. Co. (1936) 286 Ill App 163, 3 NE2d 93.

Questions of construction and effect of interstate bills of lading are controlled by former 49 USCS Appx §§ 81--124. Kasden v New York, N. H. & H. R. Co. (1926) 104 Conn 479, 133 A 573.

Proper construction of bill of lading is federal question. M. & T. Trust Co. v Export S. S. Corp. (1933) 262 NY 92, 186 NE 214, cert den 290 US 650, 78 L Ed 563, 54 S Ct 70.

4. Relationship with other laws

Harter Act, former 46 USCS Appx §§ 190--196, prohibiting certain limitations on carrier's liability, was not modified by provisions of former 49 USCS Appx §§ 81-124. Mississippi Valley Barge Line Co. v Inland Waterways Shippers Asso. (1961, CA8 Mo) 289 F2d 374, cert den <=14> 368 US 876, 7 L Ed 2d 77, 82 S Ct 123.

There is difference between criminal law of possession and commercial law of possession and title, and former 49 USCS Appx §§ 81 et seq. are inapplicable in determining issue of possession for purposes of venue of prosecution for possession of controlled substance under 21 USCS § 841(a)(1). United States v Boney (1978, CA2 NY) 572 F2d 397.

Fact that Warsaw Convention applies to action alleging liability of airline for damages caused by plaintiff's detrimental reliance upon air way, bills, does not preclude claim founded on Federal Bill of Lading Act (former 49 USCS Appx §§ 81 et seq.). Gensplit Finance Corp. v Pan American World Airways, Inc. (1984, ED Wis) <=17> 581 F Supp 1241.

5. Preemption of state law

For purposes of carrier's suit against consignor to recover freight charges for transportation of cement in intrastate commerce, District Court will look for guidance to analogous situations covered by common law and Uniform Commerical Code even though Bills of Lading Act (former 49 USCS Appx § 81) pre-empts field regarding questions of law pertaining to interstate shipment, where there is no applicable federal law. Carna v Bessemer Cement Co. (1983, WD Pa)

558 F Supp 706. 35 UCCRS 1410.

As to interstate shipment, former 49 USCS Appx §§ 81--124 supersede state laws. Browne v Union P. R. Co. (1923) 113 Kan 726, 216 P 299, affd 267 US 255, 69 L Ed 601, 45 S Ct 315; First Nat. Bank v Tchula Commercial Co. (1923) 132 Miss 58, 95 So 742; Dock & Mill Co. v Southern R. Co. (1930, Mo App) 23 SW2d 202.

6. "Common carriers"

Vessel was "carrier" within meaning of 46 USCS Appx § 1301(a) and former 49 USCS Appx §§ 81 et seq. where (1) vessel transported and discharged cargo, (2) bill of lading was issued for master and (3) no contractual relationship existed absolving ship and its owner from liability for cargo. Industria Nacional Del Papel, CA. v M/V "Albert F" (1984, CA11 Fla) 730 F2d 622, 1985 AMC 1437, cert den 469 US 1037, 83 L Ed 2d 404, 105 S Ct 515, 1985 AMC 2397.

Barge hired by shipper to transfer goods covered by bill of lading from one steamer to another is private carrier rather than common carrier. The Bowling Green (1935, DC NY) 11 F Supp 109, affd (CA2 NY) <=27> 81 F2d 1017.

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